

CONFORMED COPY

CREDIT NUMBER 3872 ALB

Development Credit Agreement

(Power Sector Generation and Restructuring Project)

between

ALBANIA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated April 6, 2004



CREDIT NUMBER 3872 ALB

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated April 6, 2004, between ALBANIA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested the Association to assist in the financing of the Project;

(B) the Borrower intends to guarantee a contract between the European Bank for Reconstruction and Development (EBRD) and Albanian Power Corporation (KESH) for a loan in an amount equivalent to not less than thirty-seven million five hundred thousand Dollars (\$37,500,000) (the EBRD Loan) to assist in financing Part A of the Project on the terms and conditions set forth in an agreement to be entered into between KESH and EBRD (the EBRD Loan Agreement);

(C) the Borrower intends to guarantee a contract between the European Investment Bank (EIB) and Albanian Power Corporation (KESH) for a loan in an amount equivalent to not less than thirty-seven million five hundred thousand Dollars (\$37,500,000) (the EIB Loan) to assist in financing Part A of the Project on the terms and conditions set forth in an agreement to be entered into between the Borrower and EIB (the EIB Loan Agreement);

(D) the Project will be carried out by Albanian Power Corporation (KESH) with the Borrower's assistance and, as part of such assistance, the Borrower will make the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to KESH, as set forth in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the agreement of even date herewith between the Association and KESH (the Project Agreement);

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The “General Conditions Applicable to Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through October 6, 1999) (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) “EMP” means the Environmental Management Plan, satisfactory to the Association, adopted by KESH on October 24, 2003, setting forth measures to mitigate any adverse impacts to the environment and monitoring measures for the Project, as the same may be amended from time to time with the agreement of the Association;

(b) “Equalizing Fund” means an equalizing fund to be established by KESH in order to ensure that profits resulting from favorable hydrology are set aside to cover additional costs for electricity imports, caused by adverse hydrology;

(c) “ERE” means the Electricity Regulatory Authority established pursuant to the provisions of Law No. 9072 on “the Power Sector Law”, dated May 22, 2003;

(d) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 of the Project Agreement;

(e) “KESH” means Albanian Power Corporation, an autonomous company established pursuant to the provisions of Law No. 7926, dated April 20, 1995;

(f) “Lek” means the currency of the Borrower;

(g) “LIBOR” means the London interbank offered rate for six-month deposits in Dollars;

(h) “PIP” means the project implementation plan for the Project, dated December 17, 2003, as the same may be amended from time to time by agreement between the Association and KESH;

(i) “Memorandum of Understanding on the Regional Energy Market in South East Europe” means a memorandum of understanding dated December 8, 2003, signed by Albania, Bosnia and Herzegovina, Bulgaria, Republic of Croatia, Former Yugoslav Republic of Macedonia, Romania, Republic of Turkey, Serbia and Montenegro, United Nations Interim Administration in Kosovo and the European Community, providing the commitment and process of the participants to improve their energy sector of the southeast Europe region and create a market for electricity and gas in the southeast European region;

(j) “Policy Framework” means the policy framework for land acquisition adopted by KESH on December 9, 2003, setting out the procedures and requirements for the land acquisition required for the tower foundations for the transmission line;

(k) “Power Sector Action Plan” means the plan adopted by the Borrower on December 24, 2003, setting out actions and targets to improve the performance of the power sector for the period from January 1, 2004, to December 31, 2006, and annual revisions made thereafter, acceptable to the Association;

(l) “Power Sector Policy Statement” means the Power Sector Policy Statement adopted by the Council of Ministers of the Borrower on April 19, 2002, as the same may be amended from time to time with the agreement of the Association;

(m) “Project Agreement” means the agreement between the Association and KESH of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(n) “Special Account” means the account referred to in Section 2.02(b) of this Agreement;

(o) “Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and KESH pursuant to Section 3.01(b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan agreement, and the term “Subsidiary Loan” means Subsidiary Loan provided under the Subsidiary Loan Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in

various currencies equivalent to sixteen million nine hundred thousand Special Drawing Rights (SDR 16,900,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in dollars, a special deposit account, in a bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 3 to this Agreement.

Section 2.03. The Closing Date shall be January 31, 2008, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on March 1 and September 1 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit in semiannual installments payable on each March 1 and September 1 commencing September 1, 2014, and ending March 1, 2024. Each installment shall be five percent (5%) of such principal amount.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause KESH to perform in accordance with the provisions of the Project Agreement, all the obligations of KESH therein set forth, shall take and cause to be taken all actions, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KESH to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall relend the proceeds of the Credit to KESH under a subsidiary loan agreement to be entered into between the Borrower and KESH, under terms and conditions which shall have been approved by the Association which shall include the principal terms and conditions specified in paragraph (c) of this Section.

(c) The principal terms of the conditions of the Subsidiary Loan Agreement shall be as follows: (i) the term of the Subsidiary Loan shall be twenty years including a grace period of five years; (ii) interest on the amount of the Subsidiary Loan withdrawn and outstanding from time to time shall be at a rate, adjusted every six months, equal to the average rate of LIBOR plus three quarter of one percent (0.75%); (iii) the Subsidiary Loan shall be denominated in Lek; and (iv) the principal amount of the Subsidiary Loan repayable to the Borrower shall be the equivalent in Lek of the amount of the Subsidiary Loan withdrawn and outstanding, such equivalent to be expressed as of the date or respective dates of withdrawal from the Credit Account on account of expenditures incurred by KESH.

(d) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association

and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.03. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.04. The Borrower shall, by November 30 of each year, update the Power Sector Action Plan, with the Association's prior agreement.

Section 3.05. The Borrower shall:

(a) ensure full and prompt payment of current electricity bills of state and state-owned entities; and

(b) by December 31, 2005, eliminate all financial arrears of state and state-owned entities in accordance with the Power Sector Action Plan.

Section 3.06. The Borrower shall:

(a) by December 15 of each year, adopt measures agreed with the Association, to mitigate the impact of tariff increases on low-income consumers; and

(b) implement such measures in the following year.

Section 3.07. The Borrower shall ensure that all the licenses and permits which are required for the construction of the power plant under Part A of the Project are issued in a timely manner.

Section 3.08. The Borrower shall, by September 30, 2004, develop and adopt a procedure, acceptable to the Association, for the award of concessions for mini-hydropower plants.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall cause KESH to maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect its operations, resources and expenditures related to the Project.

- (b) The Borrower shall:
- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association), audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
 - (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year (or such other period agreed to by the Association): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or such other period agreed to by the Association), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
 - (iii) furnish to the Association such other information concerning such records, accounts and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for, or covering, the fiscal year in which the last withdrawal from the Credit Account was made;
- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such statements of expenditure are included in any audit that the Association may have requested pursuant to paragraph (b) of this Section.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02(1) of the General Conditions, the following additional events are specified:

(a) KESH shall have failed to perform any of its obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that KESH will be able to perform its obligations under the Project Agreement.

(c) The Borrower shall have failed to substantially implement the measures envisaged by the Memorandum of Understanding on the Regional Energy Market in South East Europe.

(d) The law, decree, charter or other founding documents of KESH, including any legal or regulatory enactments upon which such instruments are based, or any licenses granted to KESH related to the Project shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KESH to perform any of its obligations under the Project Agreement.

(e) The Borrower shall have failed to substantially implement the measures recommended by the Power Sector Policy Statement.

(f) (i) Subject to subparagraph (ii) of this paragraph:

(A) the right of KESH to withdraw the proceeds of EBRD Loan and/or EIB Loan made to KESH and guaranteed by the Borrower for the financing of the Project shall have been suspended, canceled or terminated in whole or in part, pursuant to the terms of EBRD Loan Agreement and/or EIB Loan Agreement, respectively, providing therefor; or

(B) EBRD Loan and/or EIB Loan shall have become due and payable prior to the agreed maturity thereof.

(ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or prematuring is not caused by the failure of KESH or the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01(h) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower;

(b) any event specified in paragraphs (c), (d) and (e) of Section 5.01 of this Agreement shall occur; and

(c) the event specified in paragraph (f)(i)(B) of Section 5.01 of this Agreement shall occur, subject to the proviso of paragraph (f)(ii) of that Section.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01(b) of the General Conditions:

(a) the Subsidiary Loan Agreement has been executed on behalf of the Borrower and KESH;

(b) EBRD Loan Agreement has been executed and delivered and all conditions precedent to its effectiveness or to the right of KESH to make withdrawals thereunder, except only the effectiveness of the Development Credit Agreement, have been fulfilled; and

(c) EIB Loan Agreement has been executed and delivered and all conditions precedent to its effectiveness or to the right of KESH to make withdrawals thereunder, except only the effectiveness of the Development Credit Agreement, have been fulfilled.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02(b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Project Agreement has been duly authorized or ratified by KESH and is legally binding upon KESH in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KESH and is legally binding upon the Borrower and KESH in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
Bulevardi "Deshmoret e Kombit"
Tirana
Albania

Facsimile:

355 42 28494

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (MCI) or
64145 (MCI)

Facsimile:

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Tirana, Albania, as of the day and year first above written.

ALBANIA

By: /s/ Arben Malaj

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By: /s/ Nadir Mohammed

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in SDR Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Goods (including supply and install contract)	14,100,000	19.5%
(2) Consultants' services	2,730,000	85%
(3) Training	70,000	100%
	<hr/>	
TOTAL	<u>16,900,000</u>	

2. For the purposes of this Schedule, the term "training" means expenses incurred by KESH in connection with carrying out of training activities under the Project, including travel costs and per diem for trainees and trainers, study tours and workshops, rental of facilities and equipment and training materials and related supplies.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement.

4. The Association may require withdrawals from the Credit Account to be made on the basis of statements of expenditure for expenditures under contracts for: (a) for services of consulting firms under contracts costing less than \$100,000 equivalent per contract; and (b) training, all under such terms and conditions as the Association shall specify by notice to the Borrower.

SCHEDULE 2

Description of the Project

The objective of the Project is to achieve significant improvement in power system performance through: (1) priority investments to increase thermal generation; and (2) measures to implement sector reforms and institutional strengthening.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Combined-Cycle Power Station

1. Construction of a combined-cycle power station (Vlore Thermal Power Plant) at a six-hectare greenfield site about 6 km north of Vlore adjacent to an oil tanker terminal.
2. Rehabilitation of the adjacent oil tanker terminal, and connection to the transmission network.

Part B: Technical Assistance

1. Provision of technical assistance to KESH for the implementation of the Project, improvement of operation of KESH and sector reforms.
2. Provision of training to KESH in procurement and environmental management.

* * *

The Project is expected to be completed by July 31, 2007.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:
 - (a) the term “eligible Categories” means Categories (2) and (3) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;
 - (b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and
 - (c) the term “Authorized Allocation” means an amount equivalent to \$500,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3(a) of this Schedule, provided, however, that unless the Association shall otherwise agree, the Authorized Allocation shall be limited to an amount equivalent to \$250,000 until the aggregate amount of withdrawals from the Credit Account plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions shall be equal to or exceed the equivalent of SDR 1,000,000.
2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.
3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:
 - (a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.
 - (b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.

- (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

- (a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

- (b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01(b)(ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

- (c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

- (d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraphs 6(a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.